



## DIVISION OF POLICE

DATE: January 15, 2020

TO: Chief of Police Calvin D. Williams

FROM: Inspector General Christopher Paul Viland, Esq. #3700

SUBJECT: Preliminary Review and Recommendations re: Division Disciplinary Processes

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Sir,

At your request, I have been assigned to review the “disciplinary processes and timeframes for disciplinary hearings” and to make any recommendations for improvement. This review has included I.G. attendance at both Chief’s and Safety Director’s disciplinary hearings; meetings with the Case Preparation Unit including joint IA Pro© software trainings; meetings with the Safety Director, Internal Affairs Superintendent and various other line and command staff officers in the Division; individual statistical research, statistical research with the assistance of the Division’s Data Collection and Analysis Coordinator, and statistical research with the assistance of the data team from the Begun Center at Case Western Reserve University; and, a parallel review of the IA Pro© software system including its use in the disciplinary processes of the division.

The Division’s use of the IA Pro© software and data (an integral part of the Division’s disciplinary investigation process) is reviewed and recommendations are made via separate memorandum, OIG Work Product No. 19002-S.

Additionally, it must be recognized that a full and complete assessment of Division disciplinary processes may be outside the scope of this preliminary memo. The Monitoring Team has yet to begin its in-depth assessments of discipline in the Division, either by process or by individual case assessment; and, initial data mining attempts by the Inspector General have proven that **required data, data sets and data fields may not currently be adequate for thorough assessment**. Therefore, a complete review in this matter, which will take additional staffing and time is being considered Deferred at this time for inclusion in the 2020 Annual Work Plan for the Office of the Inspector General.

## **Introduction**

The primary purpose of police discipline is to help employees serve the public while maintaining high organizational standards and operating within the framework of law, policy, procedures and training. Effective discipline requires that employees are well educated as to boundaries and expectations as well as consequences. In the best of circumstances, employees understand the relationship between their behavior and consequences and naturally adjust to meet reasonable standards. In this idealized system, employees and the public are confident that employees are fairly accountable and this confidence builds the overall status and reputation of the agency in its community. Seems simple. It's not. In reality, police discipline is a messy, complicated and controversial process<sup>1</sup>.

Persons with complaints against the police are often frustrated with an overlong process that results in a "not sustained" result that they don't understand. Officers, similarly, have negative feelings about the process, including feelings of inconsistency and unfairness and the lack of being treated with respect. There does, however, tend to be a general agreement over the last several decades that police discipline, as a system, fails more often than not in meeting its stated expectations<sup>2</sup>.

The I.G.'s individual interviews at various levels within the Division, or with stakeholders and observers, tend to substantiate that there exists a general dissatisfaction with the "fairness" in the Division's discipline system in a vague manner, and often with second hand hearsay anecdotes as substantiation. This perception continues despite all the improvements in policy, systems and methodologies implemented recently and despite most recent records which show general current consistency. And, based on the general information from the National Institute of Justice article cited above, this problem of the perception of discipline seems pervasive in the profession and not specific to the Division.

## **Generalized Issues**

A primary goal in police discipline, getting employee acceptance, revolves around the core issue of "fairness". While disciplinary processes can veer towards negative experiences, if an employee feels treated fairly then corrosive negative resulting behavioral results can be more limited. Fairness generally equates to being both consistent and equitable<sup>3</sup>.

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<sup>1</sup> Stephens, Darrel W., Police Discipline: A Case for Change, Washington, D.C.: U.S. Department of Justice, National Institute of Justice, June, 2011.

<sup>2</sup> *Id.*

<sup>3</sup> Employee Disciplinary Matrix: A Search for Fairness in the Disciplinary Process, IACP, The Police Chief, October 2006.



Consistency is a comparative term and is based on the idea that employees want to know that discipline is similar over time between employees with similar circumstances resulting in similar consequences. Consistency is the antithesis of disparate treatment and is exemplified by the removal of favoritism based on rank, position, gender, race, seniority, etc.<sup>4</sup>

Equity, on the other hand refers to the idea that all underlying and contextual circumstances surrounding a disciplinary incident need to be taken into account in the process. This is the process where both mitigating and aggravating circumstances must be taken into account. Intention, history, surrounding life circumstances, training and other aspects of context must be reviewed in order to demonstrate that the results are equitable<sup>5</sup>.

The long sought after consistent and equitable disciplinary system has yet to be developed. The primary reason being that disciplinary decisions, at some basic level, have a discretionary component; discretion that is requested and required for fairness and to customize and tailor effective discipline to the individual's circumstances. That same discretion, however can be the source of the very unfairness and inconsistency that gets complained of, especially if misused, even at a very low rate.

There are three possible systemic solutions to the "problem" of discretion: eliminate it, allow for extensive appeals, or filter it through distinct guidelines<sup>6</sup>. Elimination is a naïve solution and tends to undercut any disciplinary system and erode perceptions of fairness since individual circumstances are not considered at all. Appellate systems do provide a check and balance on discretion, but only in cases where discipline is perceived as too onerous. They don't provide an avenue for complaint about those employees who "get away" with violations. Additionally, appellate processes add additional lengths of time to an already extended process which, therefore, undermines deterrent effects, adds to administrative costs, and leave employees in limbo unnecessarily<sup>7</sup>.

Enacting distinct disciplinary guidelines, by default, seems to be the current best practice. Such guidelines are oft referred to as disciplinary matrices<sup>8</sup>. This is, in fact, the tack that the Division has taken, having adopted a disciplinary matrix after review by the U.S. Dept. of Justice and the Settlement Agreement Monitoring Team.<sup>910</sup> And, while the existence of such a matrix may seem to drive discipline to a purely mechanical or automatic process, courts have established that there is inherently more that must be

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *United States of America v. City of Cleveland*, United States District Court, Northern District of Ohio, Eastern Division, 1:15 CV 01046, **Motion to Approve Amended Disciplinary Matrix**, August 20, 2019.

<sup>10</sup> *E.g.*, City of Cleveland, Division of Police, General Police Order 1.07.06 Disciplinary Guidance, November 12, 2019.

considered. A seminal case, *Douglas v. Veterans Administration*<sup>11</sup> states that selection of an appropriate penalty must involve a responsible balancing of relevant factors in an individual case. Those factors are:

- 1) The nature and seriousness of the offense, and its relation to the employee's duties, position and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;
- 2) the employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
- 3) the employee's past disciplinary record;
- 4) the employee's past work record, including length of service, performance on the job, ability to get along with fellow workers and dependability;
- 5) the effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisor's confidence in the employee's ability to perform his assigned duties;
- 6) consistency of the penalty with those imposed upon other employees for the same or similar offenses;
- 7) **consistency of the penalty with any applicable agency table of penalties** (emphasis added);
- 8) the notoriety of the offense and its impact upon the reputation of the agency;
- 9) the clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;
- 10) the potential for employee rehabilitation;
- 11) mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter, and;
- 12) the adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

There is a recognition that not all of these factors are pertinent in every case and that in some cases the factors may be in mitigation while in some cases they may be just the opposite. That being said, it appears that disciplinary decisions that address each of these items tend towards being the most supported in reviews of disciplinary actions by neutral third parties.

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<sup>11</sup> 5 MSPB 313, 5 M.S.P.R. 280 (1981)



Conversations have been ongoing with various stakeholders in the Division, especially the Case Preparation Unit regarding formatting of case disposition letters and recommendations have been made that 1) each specification show a finding, 2) that each finding be supported by reference to the disciplinary guidance GPO and the relevant factors listed above as applicable, and 3) that each finding provide substantiation in the event that there is a departure from a recommendation of the Civilian Police Review Board.

Additionally, recommendations have been made to request that the employee's representatives provide specific citation to defenses or circumstances to support their positions. This would allow the Division to more effectively document its findings per specification when the position of the employee is supported.

### **Generalized Hearing Issues**

The following commentary is stimulated by the direct observations of disciplinary hearings held both in the Office of Chief of Police and the Office of the Safety Director. It must be remembered that pre-disciplinary hearings are not trials. Despite a law enforcement agency's familiarity with and acceptance of the trappings of criminal procedures in its administrative functions, oft times that may be perceived as counter-productive.

The seminal labor law case involved, *Loudermill v. Cleveland Board of Ed.*<sup>12</sup> is very clear that an essential principal of due process in discipline is that any individual who has a property interest in their position of employment is entitled to a hearing, including oral or written notice of the charges against them, and explanation of the employer's evidence and the opportunity to present their side of the story<sup>13</sup>. Nevertheless, a full evidentiary hearing is not required<sup>14</sup>. Such hearings are not meant to resolve all issues, simply to provide the employee a meaningful opportunity to respond, especially since post-disciplinary hearings and processes are in place and available to fully address factual or complex issues.

With that as context, it does not appear necessary to require employees in a pre-disciplinary setting to plead, especially with the familiar criminal pleas of "Guilty", "Not Guilty", or "No Contest". There is no legal requirement that they make any sort of plea at all, and the formalistic criminal pleas may overly stigmatize the proceeding in such a way as to be detrimental to both sides, especially if the goal is open and transparent communication leading to fairness and consistency. The employee and/or counsel should have the opportunity not to address or deny factual assertions by the employer at all even should they like to specifically address aggravating and mitigating factors

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<sup>12</sup> 470 U.S. 532 (1985).

<sup>13</sup> *Id.* at 546.

<sup>14</sup> See, e.g., *Kennedy v. Marion Correctional Institution*, 69 Ohio St.3d 20 (1994) at 23.

exclusively. They, also may have specific factual rebuttals or additional evidence in support of their positions. Formal pleas using criminal verbiage may not be helpful in the process<sup>15</sup>.

Similarly, the Division has collected and created the disciplinary case file, encompassing all the evidence, statements and inferences arrived at during the investigation. The pre-disciplinary hearing is not generally a forum for additional evidence gathering; and cross examination by the Division or OPS should be avoided as unnecessarily antagonistic. If a goal of discipline is to appropriately hold employees accountable while at the same time recognizing that they need to be positively re-integrated into the employment environment to continue as functioning and valuable members of the organization, then overly confrontational cross examination of the employee may be counterproductive to the overall aim. The case file should stand on its own, the employee can respond as they wish, and the Division's representatives should ensure that the position of the Division is clear. That does not mean that inconsistencies or factual inaccuracies should not be rebutted on the record nor that the administration shouldn't stress investigative facts and conclusions to illuminate or educate on the Division's position, just that it be done in inclusive manner with the overarching goal of educating and rehabilitating an employee. It is incumbent on the hearing officer that these goals are adequately accomplished.

#### **Current Status Regarding Rates of Specifications Filed**

Despite the inability of the Division to provide specific, reliable, consistent historical data regarding disciplinary actions, there are places where data has been culled and superficially analyzed by the OIG for generalizations.

The Case Preparation Unit does maintain a historical Excel© spreadsheet which provides basic disciplinary history data. The data fields are not consistently interpreted over time, nor is there any consistency in terminology, abbreviation, or content of the fields; and, this has led to an inability to utilize some of the data without making assumptions at a rate that would invalidate results. Nonetheless, with the assistance of the Division Data Collection and Analysis Coordinator, Dr. Issa and the team from Case Western Reserve University, the following has been gleaned from the last two decades of data kept by the Division (5,825 specifications):

{Table appears in full on following page}

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<sup>15</sup> Stephens, Darrel W., Police Discipline: A Case for Change, *supra*.



#### Historical Disciplinary specs. by rank

Patrol Officer	62.1%
Sergeant	10.1%
Dispatcher	8.0%
Detective	6.3%
Records / Data Conversion	5.0%
Lieutenant	2.7%
Institutional Guards	2.1%
Other / Misc. <sup>16</sup>	3.7%
Total	100%

#### Historical Disciplinary specs. by assignment

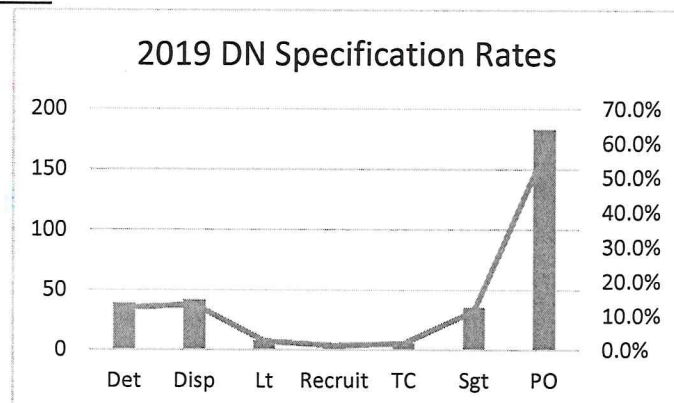
Fourth District	17.6%
Third District	13.4%
Second District	13.2%
Fifth District	12.1%
First District	9.2%
C.C.S.	8.8%
Sixth District	3.7%
Traffic	3.7%
Record / File	3.3%
Academy	2.7%
Other / Misc. <sup>17</sup>	12.3%
Total	100%

These generalized data overviews appear to show that disciplinary specifications are evenly represented through the rank structure and assignments of the Division from a common sense perspective, especially since certain of these data fields have changed or been discontinued over time (i.e. Institutional Guards, Sixth District). As data collection becomes more consistently available, these numbers should be compared to the actual census data of the Division in regards to rank and or assignment to periodically monitor continued consistency.

As a separate validation check on the data provided above, reference specifications by rank, all Disciplinary actions posted by Divisional Notice to date in the calendar year of 2019 were compiled and compared. Again, it must be noted that there are certain limitations based on assumptions that had to be made or data collection that was unclear; however that data, as follows, reinforces the general rates historically (318 specifications):

#### 2019 DN Disciplinary specifications by rank

Patrol Officer	57.5%
Dispatcher	13.2%
Detective	12.3%
Sergeant	11.3%
Lieutenant	2.5%
Traffic Controller	1.9%
Recruit	1.3%
Total	100%



<sup>16</sup> This category also includes data that could not be successfully resolved into any of the other listed categories.

<sup>17</sup> *Id.*

It does appear that disciplinary specifications are occurring roughly equivalently historically as well as by general Division census. As future such data is collected and validated, it should be monitored for consistency and equity. Moreover, after comparing disciplinary specifications by rank over periods of time with specific Division census data, that information should be available to everyone in the Division to support the ideal of consistency in discipline regardless of rank and to promote the perceptions of fairness in the Division's dealings with its members.

### **Current Status Regarding Disciplinary Dispositions**

Using the same methodologies in the preceding section, and subject to the same *caveats*, the data regarding disciplinary dispositions was similarly reviewed. Although, it must be stated that interpretation of data fields including overlap and inconsistent usage of terminology resulted in only the most preliminary of status reviews and results. Utilizing the same 5,825 historical specifications, the dispositions can be categorized as follows:

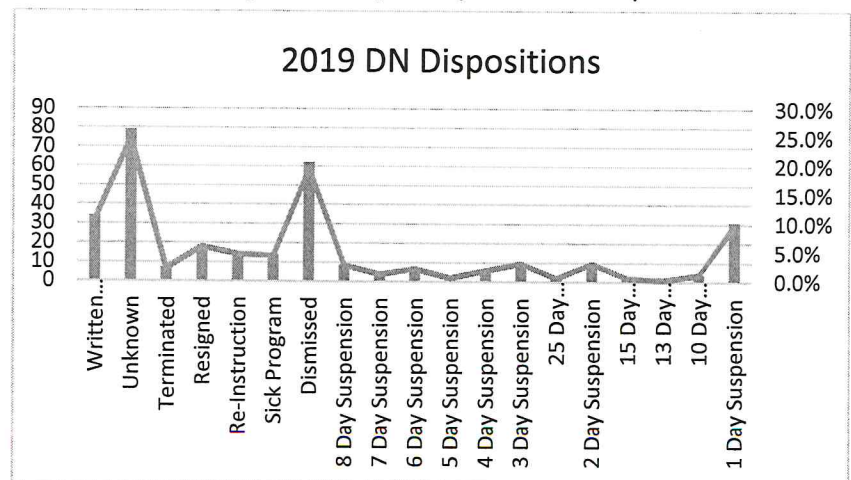
#### **Historical Disciplinary Dispositions**

Re-instruction	26.2%
Suspension Time	24.7%
Dismissal	13.2%
Written Reprimand	11.1%
Resignation / Retirement	5.8%
Sick Program	2.9%
Termination	14.3%
Total	100%

And, as in the preceding section, data from 2019 Divisional Notices to date was compiled for comparison purposes with the following results (318 specifications):

#### **2019 DN Disciplinary Dispositions**

Suspension Time	27.7%
Dismissal	19.5%
Written Reprimand	10.7%
Resignation / Retirement	6.0%
Re-instruction	4.7%
Sick Program	4.4%
Termination	2.2%
Undetermined / Other <sup>18</sup>	24.8%
Total	100%



<sup>18</sup> This category contains charge specifications that were not specifically given dispositions in case resolutions.



Based on this data and in comparison between historical and recent data, the following can be generally posited:

- 1) Approximately one quarter of filed specifications result in suspension time.
- 2) A minimum of between 15 and 20 per cent of filed specifications are dismissed entirely.
- 3) Approximately 10% of filed specifications result in written reprimands.
- 4) There appears to be a significant change in the usage of letters of re-instruction over time (26.2% vs. 4.7%).
- 5) There appears to be a significant change in documentation attaching specific findings per charge specification over time (14.3% vs. 24.8%).

It is hoped that with changes to data collection over time that more in-depth analyses may be conducted, especially usage of data to determine whether specifications are being brought consistently and effectively over time; whether specifications are duplicative or redundant when not necessary; and, whether the disciplinary system has any disparate impact that was hitherto fore unknown.

Additionally, long term study of individual specifications and connected dispositions should identify specifications that may be preferred and always dismissed (throw away charges or charges improperly brought). This type of analysis and data collection can serve as the basis of coordinating training and process improvement with all Division personnel involved in the creation of or identification of disciplinary charges and improved efficiencies. Alternatively, it may identify rules or policies that are in dire need of updating, refreshing, modifying or disposing of.

### **Current Status Regarding Timeliness**

Using only historical data similar to the preceding two sections, and again subject to the same validity *caveats*, the available data regarding disciplinary timelines in the Case Preparation spreadsheet was similarly reviewed. Such a review is required when considering that timeliness of a discipline process may, in some cases, be considered part of the “due process” an employee is entitled to<sup>19</sup>.

The first, rough data review shows that the average number of days from the report of an incident to the date of receipt in the Case Preparation Office for preferral of charges over time has been 97 days.

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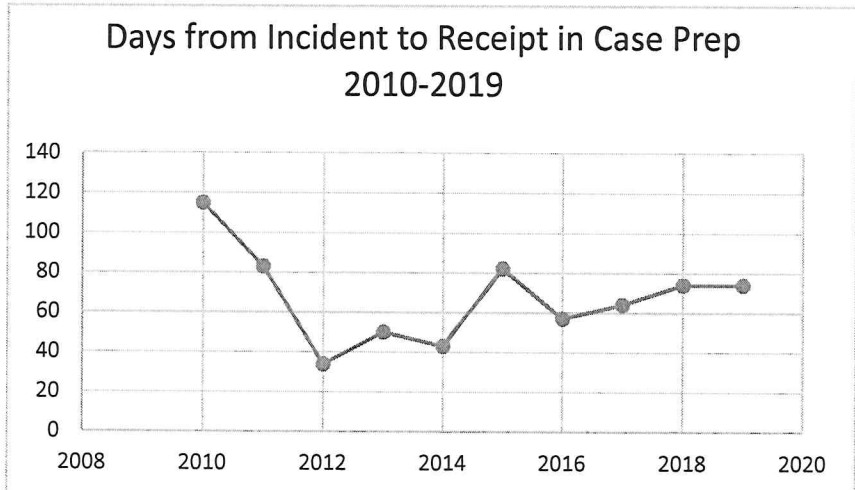
<sup>19</sup> See, e.g., Labor Arbitration Institute, Conference Reporter (via email 1-16-2020), Two Due Process Questions (wherein arbitrator opines that an eight month delay between finalized investigation and issuance of discipline was a due process violation, especially if the employee has been back to work in a trusted position for the duration).

Average Number of Days from Incident to Receipt in Case Prep

Prep

2010	63 days
2011	66 days
2012	129 days
2013	84 days
2014	93 days
2015	120 days
2016	113 days
2017	119 days
2018	108 days
2019	75 days

All Year Avg. 97 days

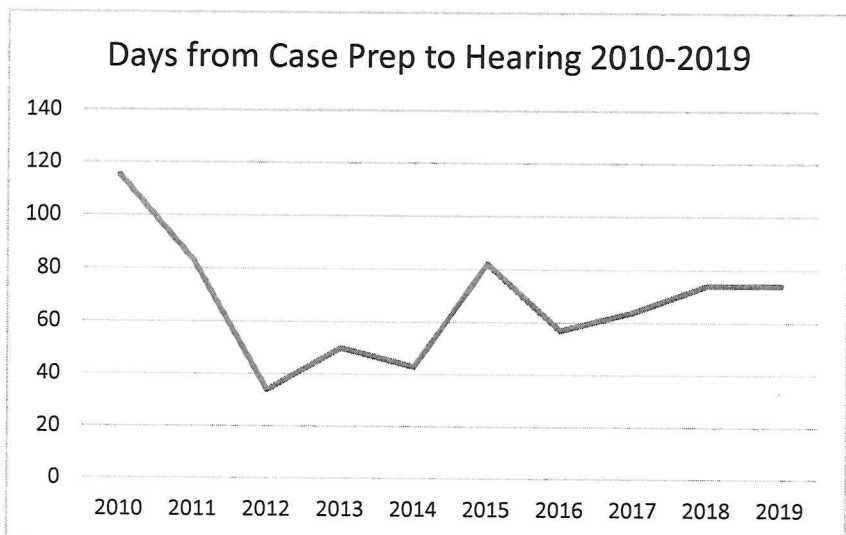


The second, rough data review shows that the average number of days from the receipt of an incident in the Case Preparation Office to the date of pre-disciplinary hearing over time has been 70 days.

Average Number of Days from Case Prep to Hearing Date

2010	115 days
2011	83 days
2012	34 days
2013	50 days
2014	43 days
2015	82 days
2016	57 days
2017	64 days
2018	74 days
2019	74 days

All Year Avg. 70 days



In both cases, the Division should strive to reduce those average time lines. And, while often there is no way to control the amount of time spent in the investigative aspect of an incident, it may be that the administrative aspects are much more controllable. Once the specifications are known, processing papers, providing notices and discovery, and scheduling hearings should be streamlined. The Division should strive to have these processes completed in less than 45 days. One methodology that may assist would be for the Division to have set hearing dates. As the Division is processing somewhere between 15 and 30 disciplinary cases per month, individually



scheduling each hearing is not administratively efficient. Set hearing dates may assist with timeliness in the process.

### **Additional Data Field Collection**

The Division has become obligated under the Settlement Agreement to monitor that discipline is consistently applied, fair, and based on the nature of the allegation<sup>20</sup>. A full and fair analysis of discipline will necessarily require that disciplinary data be collected along with population data specific to, at a minimum: rank, tenure, age, sex, race, assignment, field v admin. The same data must be collected from the Division as a whole for comparison purposes. With both data sets, analyses can be conducted to determine whether disciplinary actions are consistent with the general population of the Division, or whether some group or protected class is differentially impacted, positively or negatively. This type of data can inform the Division and be used to ameliorate any inequities as progress continues into the future. And this type of analysis can ensure that discipline is based on member behavior as opposed to any other factor.

### **Civil Service Rule 9.23 Conflicts**

Civil Service Rule 9.23 provides:

#### **“Preferring of All Charges Against Officer or Employee**

When the appointing authority or secretary of a board or commission prefers charges against an employee, pursuant to Rule 9.10, he/she shall, at the time, set forth all charges that can or may be preferred against such officer or employee, up to the time of charging, or such appointing authority or secretary of a board or commission shall thereafter be barred from preferring charges which arose prior to the notice to such officer or employee, except those charges which cannot with reasonable diligence be discovered, or known.”<sup>21</sup>

Because the Division utilizes multiple internal investigative options to maintain discipline (i.e. Inspections Unit, Internal Affairs Unit, District/Bureau Investigations, etc.), Division communications to avoid violation of Rule 9.23 is paramount. At least once during direct observations of disciplinary actions in 2019 it was seen that disciplinary charges were preferred against an employee with a separate investigation pending. While all final appeals or actions in that specific matter have not concluded, it is apparent that the Division may have given valid grounds to nullify a portion of the preferred specifications due to inefficient process. The primary information sharing gap

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<sup>20</sup> *U.S.A. v. City of Cleveland, supra*, at ¶1253(g).

<sup>21</sup> Rules of the Civil Service Commission, City of Cleveland, Revised 2006.

exists with the Internal Affairs Unit, where current IA investigations are not visible in the IA Pro© software to other Division units including the Case Preparation Unit.

As a result of the specific case mentioned above and after discussions with the Director of Public Safety, certain changes have already been implemented in order to fill the communication gap. The Case Preparation Unit notifies the Internal Affairs Unit every time charges specifications are planned so that IAU can de-conflict with its current active investigations.

### **Alternative Disciplinary Action**

It has become common knowledge that the police profession is suffering from a workforce crisis, which may in fact becoming worse<sup>22</sup>. Less candidates leads to staffing shortages and an inability to maintain minimum staffing levels, especially where most needed. Disciplinary systems which primarily utilize suspensions from work without pay as punitive measures have the unintended consequence of reducing the organization's own ability to adequately staff by removing qualified members temporarily from the staffing plan. Ironically, properly applied disciplinary suspension may harm the organization more, in certain circumstances, than they have the expected effect on an employee resulting in behavioral change.

For this reason, it may behoove the Division to investigate alternative disciplinary actions outside the norm of suspension without pay. Such investigation should include an active dialogue which must include unions engaged in collective bargaining agreements with the Division as well as the legal department of the City; however, in many cases alternative resolution may end up as a win-win for the organization and the employee, and mutual agreement may be possible.

For purposes of this discussion, the following alternatives are examples of disciplinary tools in use in government agencies<sup>23</sup>:

- a) Employee forfeits time from banked leave time categories in lieu of time that would have been spent on suspension.
- b) Employee remains on duty, but is detailed to a community service assignment (including projects in the service of the public that may not be with the Division) in lieu of time spent on suspension.
- c) Employee is temporarily assigned to less desirable work shift for the organization's benefit (depending on current CBA language).

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<sup>22</sup> Police Executive Research Forum, The Workforce Crisis, and What Police Agencies Are Doing About It, Washington, D.C. September, 2019.

<sup>23</sup> See, e.g., The U.S. Merit Systems Protection Board, Alternative Discipline: Creative Solutions for Agencies to Effectively Address Employee Misconduct, Washington, D.C. July 2008.



- d) Employee is mandated to satisfactorily complete an employee assistance program appropriate to the infraction and its cause, in lieu of suspension. The suspension may be stated and held in abeyance until the program is completed.
- e) Long suspensions may be broken up and scheduled by the organization so that the impact on daily staffing shortages can be minimized.
- f) "Paper" suspensions are imposed, where there is no actual suspension or loss of pay, but there is an agreement that the suspension exists for the purposes of future progressive disciplinary processes.
- g) "Minimum wage" suspensions are imposed, wherein the employee actually is present for full service duty but is paid only at the current minimum wage (depending on current CBA language).
- h) Suspensions issued and held in abeyance pursuant to certain conditions. If the conditions are, or are not, adequately met, then the suspension time is imposed.
- i) Employee loses privilege of secondary employment authorizations in lieu of suspension.
- j) Employee loses privileged assignment status in lieu of suspension (i.e. Field Training Officer position).
- k) Employee loses seniority status (permanently or temporarily) in lieu of suspension. Such loss may also be made part of a public deterrence plan.

The Division should consider adding alternative disciplinary dispositions, including but not limited those listed as example above, to the current systems and process in order to most effectively manage staffing resources.

### **Matrix Discretion Conflicts**

Definitions of Group I and Group II violations in the Disciplinary Guidance General Police Order are as below<sup>24</sup>:

"Group I Violation is conduct that has a negative impact on the operations or professional image of the Division or that negatively impacts relationships with other officers, agencies or the public."

"Group II Violation is conduct that is contrary to the values of the Division, or that interferes with its mission, operations or professional image, or that involves a demonstrable serious risk to officer or public safety."

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<sup>24</sup> Cleveland Division of Police, Disciplinary Guidance, General Police Order 1.07.06, November 12, 2019.

Unfortunately, similar conduct is defined in both groups almost verbatim:

<b>Group I</b>	<b>v</b>	<b>Group II</b>
"negative impact on the operations"	v.	"interferes with ... operations"
"negative impact on ... professional image"	v.	"interferes with ... professional image"

Additionally, but less directly, there is broad overlap:

"negatively impacts relationships with other officers, agencies or the public"	v.	"interferes with its mission, operations or ... image"
"negatively impacts relationships with other officers, agencies or the public"	v.	"conduct that is contrary to the values of the Division"

Truly the only clear distinction between the Groups is Group II's defined conduct that "involves a demonstrable serious risk to officer or public safety".

The resultant subjective analysis in the decision as to which Group applies can and has led to a conflict in the system. This is most apparent where the Cleveland Civilian Police Review Board makes a finding to move forward with a recommendation of disciplinary action to the Chief of Police. As part of that process, Board members identify a Group by motion that at times appears to be a subjective judgment. When that disciplinary action wends its way through the process to eventual disposition, it is not uncommon for the Chief of Police to find that the Group identified by the CPRB was incorrect and to depart from the CPRB's recommendations. While data analysis has not been completed, it does appear that this subjectivity in terminology choice may be resulting in differences between the Division and the CPRB and resultant departures and appeals. Liaison or training between the two entities may resolve a portion of this and reduce the percentage of disciplinary matters that result in departures from recommendations.

### **Conclusions**

The truism "perception is reality" exists because there is some fundamental recognition that how people feel is very often how they perceive facts to be. In the matter of discipline, especially the discipline of the Division as it stands today, the perception of "unfairness" or "inequity" is not an uncommon refrain. This perception exists despite any factual realities, including those expressed above. And, the perception exists in the memories and allegories shared by employees over the previous many decades. Overcoming this pre-existing perception, even if current and



future discipline is completely equitable, fair and transparent, will be difficult, especially in light of the fact that very often facts and logic cannot sway a perception or emotional argument. Nonetheless, consistency and transparency are the pathway to future acceptance. It is recommended that the Division move towards collecting data in a more consistent and comparable manner, that the data be reviewed on a periodic basis, that the reviews of data be examined to improve disciplinary processes, and that the data be publicly available to show the efforts and successes of the Division.

Therefore, the following specific recommendations are made:

- 1) With regard to Division disciplinary actions, software data entry must be consolidated into a single format with standardized notation to enable long term, longitudinal analyses and to be used for improvement of process and purpose. It cannot be overstated how much valid, **consistent**, and thorough data collection is necessary in quality control of disciplinary actions. {This recommendation has been previously made regarding the usage of IA Pro© software and with the participation of the Case Preparation Unit and the IA Pro© administrator staff}.
- 2) Additional data fields should be collected moving forward into the future. Specifically, tenure, age, race, and sex data should be captured in order to analyze equity in treatment of all, including protected classes. All data fields should be compared to a current population and assignment census numbers of the Division. (Thought should be given to bifurcating the patrol rank and the sergeant rank into those involved in field operations and those involved in administrative operations for more accurate comparison).
- 3) Disciplinary time lines must be shortened from time of receipt in the Case Preparation Office to Disposition. A specific recommendation is made to identify standing hearing dates during each month to prevent scheduling delays as current volumes would support one if not two standing hearing dates per month. {This recommendation has been made directly to the Case Preparation Unit which has agreed to attempt to facilitate this change}.
- 4) Disciplinary dispositions must be made transparent, not only in each individual case, but also as aggregate data throughout the Division so that the reality of the disciplinary process is available to publicly compare to any perceptions that may exist.
- 5) Communications between the Case Preparation Office and other investigative bodies must improve to avoid a conflict under Cleveland Civil Service Rule 9.23. This conflict may have been an unintended consequence of certain uses of the IA Pro© software, however, must be accounted for. {Prior to publication of this recommendation, the Case Preparation Office and the Internal Affairs Unit have initiated a process to de-conflict, in person, monthly}.
- 6) The Division should actively investigate alternative methods of discipline which don't result in removing officers from necessary staffing plans.

- 7) Disciplinary disposition letters should more patently indicate the specific finding for each individual charge specification, must reference the specific provisions of the disciplinary guidance GPO relied upon as well as the applicable factors from the *Douglas* case listed in this memo, and must provide substantiation with specificity for any disposition that departs from a recommendation of the Civilian Police Review Board. {This recommendation has been made directly to the Case Preparation Unit which has agreed to attempt to facilitate this change}.
- 8) During the disciplinary process, an employee or their representative should be requested to provide specific citing references that support their positions in defense. {This recommendation has been made directly to the Case Preparation Unit which has agreed to attempt to facilitate this change}.
- 9) The Division should consider changing the use of criminal trial process terminology in its disciplinary systems and processes.
- 10) Provide a liaison with or additional training and communication to the Civilian Police Review Board to more standardize the subjective choices being made when selecting between Group I and Group II recommendations for discipline. This differentiation should stress the Group II risk to safety standard.

### **For Future Consideration**

Recent professional reviews of law enforcement disciplinary processes have clearly identified that the disciplinary appeals process has a significant effect on a disciplinary system, whether that be appeal to higher organizational authority (i.e. Safety Director) or arbitrator<sup>25</sup>. In cases where discipline is overturned, are sanctions wrong? Does the result simply reflect the philosophy of the new fact finder? Does frequency of overturning have an impact on employees? On the trust and confidence relationship with citizens who see disciplined officers back on the streets? Therefore these issues: Results of arbitration of discipline cases in the Division; and, Results of appeals of discipline of the Division to the Director of Public Safety may be appropriate for future analysis or review.

### **Final Thought**

The primary first line of defense against an overburdened administrative disciplinary system or inadequacies in such system has always been and continues to be proper selection and recruitment measures to identify candidates with necessary and appropriate temperament<sup>26</sup>. This elusive solution has yet to be fully identified in the law enforcement profession, however, significant investment in high quality pre-screening

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<sup>25</sup> Stephens, Darrel W., *Police Discipline: A Case for Change*, *supra*.

<sup>26</sup> See, e.g., Gourley, G. Douglas, *Police Discipline*, 41 J.Crim L. & Criminology 85 (1950).



and onboarding of police candidates can pay off in multiples compared to hours of administrative time and effort spent in disciplinary processes much less any future legal costs or penalties.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Christopher Paul Viland', with a stylized flourish at the end.

Christopher Paul Viland, Esq.  
Inspector General  
Cleveland Division of Police  
Work Product Number 19003-M

cc:    *via email only:*    Deputy Chief J. O'Neill  
   Hon. Gregory White